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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/642,221	08/18/2000	Ryukou Arisawa	32892	6271

116 7590 08/13/2004

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EXAMINER

APPIAH, CHARLES NANA

ART UNIT	PAPER NUMBER
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2686

DATE MAILED: 08/13/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/642,221

Applicant(s)

ARISAWA ET AL.

Examiner

Charles Appiah

Art Unit

2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 112

2. Claims 1-5 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, it is not clear what the "user's selection" as recited on line 8 of claim 1 is in regard to - does the user select "the music data" or "an application software corresponding to a music data format" ?.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Shanahan (6,496,692).

Regarding claims 1 and 6 Shanahan discloses a portable cellular phone and a method of operating a portable cellular phone (see col. 3, lines 6-15) comprising: a music data retrieving means, which retrieves music data (see col. 3, lines 25-37), a downloading means which downloads an application software corresponding to a music data format defined in connection the music data from a remote server in

response to a user's selection (see col. 3, lines 41-54, col. 4, lines 10-51, col. 6, lines 15-42 and col. 7, lines 1-12).

Regarding claim 2, Shanahan further discloses wherein the retrieving means retrieves the music data storage medium (see col. 3, lines 25-29).

Regarding claim 3, Shanahan further discloses wherein the retrieving means retrieves the music data via communication means such as a wireless communicating means (see col. 3, lines 4-24).

Regarding claim 4, Shanahan further discloses an application software executing means, which executes the application software in association with the music data in the cellular phone (see col. 10, lines 1-13).

Regarding claim 5, Shanahan's teaching of the receiver replacing its ring sequence with the signature file and playing the signature file (see col. 12, lines 1-16) reads on wherein the application software executing means executes a plurality of pieces of application software in parallel simultaneously in association with the music data.

Claim 8 is rejected for the same reasons set forth in the rejection of claims 1, 4 and 5 above.

Claims 9 and 10 are rejected for the same reasons as set forth in the rejections of claims 2 and 3 respectively.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lee et al. (6,728,531) discloses a method for remotely

configuring a format for providing content information on a wireless communication device.

Janky et al. (6,549,,942) discloses an enhanced method for delivering audio data to a portable device.

Kokhab (6,563,770) discloses an audio distribution apparatus.

Response to Arguments

6. Applicant's arguments with respect to claims 1-10 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Appiah whose telephone number is 703 305-4772. The examiner can normally be reached on M-F 7:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on 703 305-4379. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2686

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

July 31, 2004
CA


CHARLES APPIAH
PRIMARY EXAMINER